

3ccrruis

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1 UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 UNITED STATES OF AMERICA

4 v.

02 Cr. 1290 (RMB)

5 HECTOR RUIZ,

Sentence

6 Defendant.

7 -----x

New York, N.Y.  
December 12, 2003  
3:15 p.m.

8  
9 Before:

10 HON. RICHARD M. BERMAN

11 District Judge

12  
13 APPEARANCES

14 JAMES B. COMEY  
15 United States Attorney for the  
Southern District of New York  
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23 ROBERT VAN NORMAN WHITFORD  
24 Interpreter (Spanish)  
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1 (Case called)

2 THE COURT: Good afternoon. We are on today for  
3 sentencing. We have a Spanish language interpreter. I would  
4 ask Mr. Ruiz if he is able to understand these proceedings with  
5 the help of the interpreter.

6 THE DEFENDANT: (Through the interpreter) Yes.

7 THE COURT: Let me say at the outset, before I deal  
8 with the legal issues that you all have raised, that there are  
9 certain constraints that apply to the sentencing. One is, of  
10 course, the most important, which is the jury's determination  
11 in this case. We will talk about that a little bit further.  
12 In addition, there are the sentencing guidelines which apply in  
13 all criminal cases. And there is a statutory minimum here as  
14 well that applies, which I am sure counsel is aware of.

15 Before I start, I would ask counsel if any  
16 consideration has been given to what are called the safety  
17 valve provisions of the sentencing guidelines, which under  
18 appropriate circumstances, if the conditions are met, allow  
19 sentencing below the statutory minimum.

20 MR. MUKASEY: Judge, I want the record to reflect that  
21 before the trial of Hector Ruiz and the other defendants in  
22 this case I raised the issue of the safety valve possibility  
23 with Alex Eisemann, prior counsel to Mr. Ruiz. I invited Mr.  
24 Ruiz, through counsel, to come in and safety valve and also  
25 suggested to Mr. Eisemann that that would be an avenue

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1 available to reduce his sentence even if convicted after trial.

2 So from the government's perspective, that has been  
3 raised. There was never any response either from Mr. Eisemann  
4 other than an indication that Mr. Ruiz wasn't going to do that  
5 prior to trial, and I haven't heard anything post-trial on that  
6 subject.

7 THE COURT: I am raising it just to have it clear so  
8 that we have a clear record as to the defense position and the  
9 government's position.

10 MR. SEIDLER: Your Honor, I have discussed the issue  
11 with Mr. Ruiz. It is my firm conviction that Mr. Ruiz is not  
12 going to meet the fifth criteria to the government's  
13 satisfaction or anything even close to it. Therefore, I did  
14 not pursue such a meeting.

15 THE COURT: I just wanted people to be aware of the  
16 possibility.

17 Let's then talk about the legal issues that have been  
18 raised here. By letter dated November 14, 2003, the defense  
19 objects to various paragraphs in the pre-sentence investigation  
20 report.

21 Incidentally, with respect to that, and before I go  
22 any further, the pre-sentence investigation report, as I am  
23 sure you are aware, incorrectly refers in several places not to  
24 Mr. Ruiz but to one of the other persons who was charged in  
25 this offense, Mr. Duque. My office called them -- that is an